

Legal Services Commission's Response to the Solicitors Regulation Authority's (SRA) discussion paper on 'how to assure the quality of the delivery of legal services'

Introduction

1. The Legal Services Commission (LSC) is an executive non-departmental public body sponsored by the Ministry of Justice. With an annual spend of around £2bn, we are responsible for the delivery of civil and criminal legal aid. We help over two million people in England and Wales every year.
2. The LSC is committed to ensuring that clients have access to quality services that meet their needs, and that providers deliver quality, value for money and client focused services. As a major purchaser of legal services and a key stakeholder we appreciate the opportunity to respond to your proposals on assuring quality.

Overview

3. The LSC's vision is "*legal aid – fair access to justice*". The LSC is committed to ensuring that clients have access to quality legal services that meet their needs, and that providers deliver client focused quality services that represent value for money.
4. Over the years, the Legal Services Commission (LSC) has taken on some 'quasi regulatory' functions for legal aid services. The LSC has developed quality tools (usually in close co-operation with representative bodies) to address what it saw as gaps in regulation. In particular, professional regulation had created no:
 - widely used quality management standards
 - compulsory category specific requirements on individual expertise or overall quality of advice.
 - measures to assess advocacy, which the LSC is addressing through the QAA project
5. The current position places ownership of quality with the Commission, rather than with providers and regulators where it properly belongs. Quality must be the responsibility of the provider, with the role of a regulator being to set and assure minimum standards, and to provide a framework for demonstrating specific areas of competence or excellence. We welcome the intentions outlined by the SRA for the new quality framework, and in particular are pleased to see that the importance of organisational standards and effective supervision alongside individual competence has been recognised. This has long formed part of the LSC's quality framework.
6. The LSC believes that a robust regulatory system should include quality assurance systems that can be relied on by private and publicly funded clients alike, which will be of particular benefit to the most vulnerable. We hope that this consultation brings the prospect closer.

7. The LSC sees the SRA's intention to develop a clear and transparent framework for quality informed by, and operated in the interests of consumers, as a big step forward. The current regulatory structure has not been seen to work in this way. It has risked being perceived as run by lawyers for lawyers.
8. Putting the client first is at the heart of the LSC's approach to quality. We want widely utilised quality assurance standards and measures to sit alongside our additional contract requirements that can be more flexible and responsive to legal aid clients, their needs and how they experience legal services. Factors we are considering include how people want to access services (face-to-face, by telephone), how complex or numerous their problems are, how far they must travel and whether they need to access services in several categories at the same time.
9. We would expect a regulatory framework that covers quality to assist people to make informed choices about where to get help. A clear framework that assures quality and can be easily understood by clients will support this. Alongside an effective framework, regulators should work to raise consumers' awareness of what it means and the information they can use to make informed choices. Legal regulators should aspire to achieve a level of recognition for standards comparable with the British Standards Institute (BSI) Kite Mark, which is recognised by consumers as a mark of quality and safety of a product or service.
10. The LSC has no preference in relation to choice of regulator. The priority for the LSC is that regulation from the SRA, or any new regulator that is permitted under the Legal Services Act, has a focus on and commitment to driving quality for the client, to the greatest extent consistent with avoiding undue barriers to entering the legal profession or limiting the market. Competition between regulators may create the right balance between quality assurance and open access. However we recognise the risk that competition may create a 'race to the bottom' with regulators setting lower standards or offering lighter touch approaches to attract members, ultimately putting clients at risk. We would urge the SRA to work closely with other regulators, as they have been with the Bar Standards Board (BSB), to agree the principles of common standards to safeguard against this, and to ensure that where there is a quality differential between regulators, this is made as clear as possible to clients. Mobilising client choice could be one way for the SRA to incentivise organisations and entities to be regulated by them in a competitive market.

Consumers and competition

Q1. How can we best ensure that consumers are able to access high quality and good value legal services?

11. The key to ensuring consumers are able to access high quality services is providing information to allow them to make informed choices. This approach reflects the Legal Services Board vision, set out in their business plan of 'empowered consumers receiving the right quality of service at the right price.'
12. There should be clear communication channels in place to provide consumers with meaningful and consistent information on;
 - The quality standards met by legal services providers and,
 - the role of the regulator in ensuring standards.
13. This will support members of the public to choose between providers. In other industries such as engineering and travel, consumer awareness of standards and what they can expect is high, with well-recognised schemes such as the BSI Kite Mark scheme and associations such as ABTA in place.
14. Information for consumers should include the results of regulatory assessments, details of accreditations held by fee earners, and perhaps the outcomes achieved for clients. The LSC is keen to work with SRA and others to help make information available.
15. The SRA should also consider how feedback from clients about their experiences can be harnessed to inform others. Empowering clients to share their experience has been effective in enabling choice in the context of social and health care, and potentially has an important role to play in legal services too.

Q2. Are there any particular consumer groups whose specific needs should be concentrated on by the SRA as a priority?

16. We agree that different consumers have different levels of knowledge as to what constitutes a quality legal service. Large corporations that regularly purchase legal services may easily be able to identify the specialists they need. However, for many individual consumers including those in receipt of legal aid, there is less on which to base a choice. This applies all the more to those individuals who are infrequent consumers of legal services or any vulnerable client (e.g. those with physical or mental disabilities, or with poor literacy in English)
17. The overarching objective of a quality framework must be to ensure that all clients receive a competent service. We agree with the SRA that this need not be the same, base-line, standard for all cases or categories of law, but should reflect the type of work and the particular expertise required to ensure that the work is conducted in the interests of justice and in the best interests of the client. Ideally there should also be mechanisms to enable clients to identify and choose providers that achieve higher standards.

18. There is a clear public interest in a quality framework that protects clients with legal cases for which their capacity to make informed choices about competent service provision (for whatever reason) is limited. We believe that these consumer groups should be prioritised. We consider that the majority of legal aid clients would fall into this category. There are also certain areas of law, be they publicly or privately funded (e.g. immigration and asylum, mental health and public law children proceedings) where clients are likely to be particularly vulnerable, and where assuring services in their interests is of even greater importance. The clients that utilise these areas of law should be considered as a high priority for the SRA to concentrate on regardless of whether they fall within any of the priority consumer groups.

Q3. How can we ensure that the delivery of legal services reflects the diverse needs of consumers and clients?

19. The future regulatory structure of legal services, including the quality assurance framework, must protect consumers whilst encouraging innovation, new entrants and diversity – both in provision and the clients provided for.

20. To ensure that services reflect the diverse needs of consumers and clients, legal services providers must have equalities and diversity policies in place and in effective operation. The LSC requires its providers to address equalities and diversity through requirements in the contract and in the Specialist Quality Mark. These requirements cover the treatment of clients, employees and job applicants. As a matter of regulation, all providers should as a minimum have such policies in place.

Q4. Are there any commercial advantages or disadvantages of looking at different consumer groups, which may affect competition?

21. There are clear commercial advantages associated with considering the needs of different consumer groups and tailoring a service accordingly. To date the profession has not fully embraced the advantage to their business associated with this type of behaviour.

22. Providers that have a clear understanding of the needs of consumers will encourage consumers to select their business over others in the market place. In order to gain this understanding providers will need to engage directly with their clients to determine their needs and also make use of the information derived from the Legal Services Board's Consumer Panel.

23. A reputation for being open and diverse or providing innovative delivery methods may encourage more footfall through recommendation. In a more competitive market and an environment where consumers have the ability to make informed choices, client experience will take on a much greater significance. Organisations that respond well to their clients' needs will obtain a competitive advantage.

24. Feedback from client diversity groups that the LSC have run stress that what people are looking for are organisations that understand their needs and are able to provide services to meet those needs e.g. accessible services, use of interpreters or British Sign Language etc.

25. Meeting consumer needs could also include a provider having links with other services that clients may wish to access in relation to their problem. For example links to counselling and support groups in areas such as domestic violence or clinical negligence or organisations that can help with accommodation for people under threat of homelessness etc.
26. Major public sector funders (and potentially private sector customers) will be more interested in those providers who can demonstrate delivery of services to diverse groups of people, tailoring their delivery to the needs of each consumer.

Defining quality

Q5. How far do the factors set out in paragraph 16 above provide a clear rationale for reviewing the SRA's regulatory requirements? Are there any other factors which we should consider?

27. We agree with the factors set out in paragraph 16 of the discussion paper. We would include the following factors as additional reasons why it is necessary to regulate the quality of professional services:
- Implied Authority – solicitors are in a position of power and esteem in relation to the client. Clients tend to assume that the provider they see is competent and typically take their advice on trust.
 - It is in the self interest of the profession to have a good reputation for skill and integrity. Where the rigor of regulation comes into doubt, professional reputation comes into question as can be seen in the current financial services market.
 - Cost of the service – legal services can be expensive, and it is difficult and potentially costly for a dissatisfied customer to move on to another provider (who must take fresh instructions and familiarise themselves with the work already done). This contrasts sharply with the approach one might take with an unsatisfactory utilities provider.

Delivering quality

Q6. Do you agree that individual competence, the management of the environment and the quality of the service experience together help determine the overall quality of the delivery of legal services?

28. As the discussion paper identifies, quality is a multifaceted concept not solely based on the technical quality of advice. Regulators' perception of quality should encompass a range of factors, but must begin from the experience of the consumer. This comprises areas such as access to service, method of delivery and communication, alongside quality of advice, and preferences may vary from person to person. In order to put clients first any framework must take their viewpoint into consideration.
29. The LSC believes that in order to ensure that consumers are able to access high quality and good value legal services that any quality framework should require:

- **Quality of processes:** Management systems are in place to deliver quality services.
Quality standards such as ISO and Chartermark are an accepted part of the quality landscape in most industries, but have been slow to gain currency in the legal sector. Quality standards with direct application to the legal sector are the **SQM**, **Lexcel** and **QMS4Law**. They demonstrate that an organisation has the right processes in place to prevent common causes of poor quality service. These standards also place a priority on clear, timely and effective communication with the client.
- **Category specific competence (quality of advice):** Fee-earners are appropriately qualified, have the necessary expertise and are competent in the area of law in which they offer services to clients.

This may be achieved through mechanisms such as accreditation (for individual lawyers), and peer review (for whole organisations).
- **The client experience/customer service:** systems to gather and respond to client feedback on service provision.

Q7. How far do you think we can rely on the above factors without routinely measuring the standard of legal work itself?

30. The LSC strongly believes that any new quality framework must be supported by a robust monitoring and assessment mechanism that ensures compliance with each element of the framework.
31. The danger of operating a system without direct measurement of the standard of legal work is that without a clear test of quality of advice, legal services providers and clients may not see the value of quality systems, or may fail to appreciate the level of assurance that they can give on their own.
32. The need to *assure* quality rather than *assume* quality (based on the presence of practice rules etc) is borne out of experience. For example in immigration, despite the existence of Practice Rules (since replaced by the Code of Conduct) governing competence, evidence from the LSC contract audits, the judiciary and other sources identified that a significant minority of advisers undertaking publicly funded work were not providing a quality service to clients. As a result the Immigration and Asylum Accreditation Scheme (IAAS) was introduced and made mandatory for all individuals providing publicly funded immigration and asylum advice from 2005.
33. IAAS has driven up standards of publicly funded immigration and asylum legal advice and ensures that members of the public and clients can be confident that all individuals providing legal advice under an LSC immigration contract have been subject to rigorous and independent quality assessment. It also ensures that members of the public can identify quality assured, competent immigration and asylum advisers. However it remains the case that no such system exists to protect private fee-paying clients, as a result they have no assurance of the quality of service they receive, it may be satisfactory but equally it may not

The current framework

Q8. How far do you think the current framework assures the quality of the delivery of legal services?

34. There are clear gaps in the current framework particularly surrounding management standards, compulsory category specific requirements for individual expertise and effective supervision. The LSC has had to take on some 'quasi regulatory' functions for legal aid services through the development of quality tools to address these gaps. We are pleased to see that the importance of organisational standards and effective supervision alongside individual competence has been recognised by the SRA.
35. We would encourage the SRA to not only look at the gaps in the current structure but also current requirements and their effectiveness.
36. Any future framework should continue to include areas surrounding accreditation and continuing professional development (CPD). However under the current arrangements the standard of CPD courses is not consistent and the training does not have to be targeted on an individual's specialism. The points raised in response to question 18 are relevant here.
37. Accreditation schemes that are well designed, robustly managed, and subject to regular re-accreditation can play an important role in assuring and improving the quality of legal advice and representation provided to clients. Currently the structure does not operate in this way with different schemes providing differing levels of assurance. For example schemes such as the Higher Rights of Audience do not currently require periodic accreditation whereas the Family Law Accreditation Scheme requires reaccreditation after 5 years. Increased standardisation of levels and reaccreditation systems would make the assurance given by accreditation more transparent to consumers.

Q9. Are there any areas of good practice which we should look at immediately?

38. When developing the framework we would recommend looking at the way the immigration accreditation scheme operates and the assurance it has provided for immigration standards in publicly funded work.
39. The scheme is fluid and allows career progression through the identification of different levels from probationer to advanced caseworker. Accreditation schemes that reflect these different levels are unlikely to create a barrier to entry or result in all schemes being set at the lowest level. This staged approach has worked well in the immigration panel and we would recommend that this approach be repeated across the categories of law.
40. We are pleased that the SRA's current thinking includes areas relating to supervisory competence. The LSC would particularly welcome the development of supervisor accreditation along the lines of the structure in place for IAAS. Consideration should also be given to the category specific supervisors standards used by the LSC, which the SRA have referred to in the discussion paper.
41. We would encourage the SRA to, wherever appropriate, continue to adopt a collaborative approach to the development of a quality assurance framework for legal

services. In this way it will be easier to take the profession and other regulatory bodies with them on the journey to ensure the delivery of quality legal services through common standards.

42. An example of where collaborative working has been paramount, and which the SRA may want to use as an example, is the Quality Assurance for Advocates (QAA) project. The approach to developing a scheme that will be effective and robust has been to adopt a truly collaborative approach between the representative and regulatory arms of the professions, the judiciary and CPS, amongst others. This means that nominated practitioners and individuals with necessary expertise have been involved in the development of all aspects of the scheme. The collaboration will also result in common standards across the prosecution and defence.
43. We would also suggest that when looking for examples of good practice the SRA consider making use of any information about common issues concerning quality and provider performance. Feedback might be obtained from insurers, the Office of Legal Complaints, consumer groups and other interested parties. The Independent Peer Review process used by the LSC has provided a wealth of information directly related to the quality of legal advice and information given to clients. As a result the Peer Reviewers have produced 'Improving Quality Guides' in a number of categories of law¹, and a generic guide is in production for release in Summer 09. Use of information such as this may help the SRA to identify areas of risk or where training, development or additional measures may be required.

Delivering our quality assurance approach

Q10. What do you think about our proposal to develop a professional standards framework?

44. We welcome the development of a Professional Standards framework and the areas that have been identified within it.
45. We agree that any framework should cover the standards required when entering the profession ('day one outcomes') and those required through the career of a practitioner. We do not believe it is sufficient to only set standards on qualification, or that the standards are the same regardless of the category or complexity of work that a practitioner conducts.
46. In paragraph 29 it is stated that the standards framework will:

"Identify the standards of knowledge, skills and behaviours which qualified solicitors should demonstrate in the defined roles that they take in their practicing environment"

47. It is not clear exactly what is meant by 'defined roles' and whether the SRA are specifically referring to the practitioner roles identified in paragraph 44 of the discussion paper. The LSC would strongly recommend that 'defined roles' also take into account the requirements of particular category specialisms. For example,

¹ Improving Quality Guides are available in Crime, Debt, Employment Family - Housing Immigration, Mental Health and Welfare Benefits. The guides can be found <http://www.legalservices.gov.uk/civil/how/5563.asp>

although highly specialist, clinical negligence work lends itself well to division of labour so long as effective supervision is in place. Cases tend to be lengthy and process based; but quality is driven by good case management and structured review of merits and cost benefit. As a result minimum standards could be assured largely through requirements for supervisors.

48. However there is a case for going further where individual competence needs to be guaranteed. In particular, it will not only be qualified solicitors that the SRA should look to set standards for, but also other fee earners. We would suggest as examples areas such as duty solicitor or immigration work, where it would be appropriate to require a certain standard for all fee-earners due to the independent nature of the work that individuals do. The SRA should also take account of the vulnerability of the client group, and any evidence of systemic poor performance in deciding the roles that must be specifically quality assured.
49. When setting the framework, the SRA will need to ensure that there is a clear route through which practitioners can progress and develop and that it does not stifle competition and innovation.

Q11. Have we identified all the areas that such a framework should cover?

50. The framework outlined identifies the core areas we would expect it to. However it will only deliver on its objectives if it is monitored and managed effectively, and where problems are identified either with an individual or an entity all necessary steps are taken to address issues in a timely fashion. Only with this in place will there be consumer and funder confidence in the regulatory approach.

Q12. How can we best make a co-regulatory approach work?

51. It is not clear from the paper what is meant by co-regulation and the extent to which it forms part of SRA's plans. As a starting point for discussions in this area the SRA should outline a clear working definition of 'co-regulation' in the context of its work. The inference from the paper is that there will be certain elements of self-regulation (self certification) permissible under the framework without direct intervention from the regulator.
52. We agree that the primary responsibility for the delivery of a quality service rests with the provider, with the role of a regulator being to set and assure minimum standards where necessary. We do not believe that regulation of the legal sector should be overly burdensome – but conversely we believe the evidence suggests that at present it is too 'light touch'. We want to see the 'right touch' approach to regulation to ensure that the needs of the consumer are protected. In some circumstances it may be possible to achieve this with elements of self-assessment or in-house processes, but this must be balanced with independent audit.
53. When considering an appropriate approach to regulation the SRA must have the best interests of the consumer as its focus. Co-regulation may not be in the consumers best interests if the model relies too much on self-assessment. Regulation must not only be independent of the needs of the industry but must also be seen to be independent. We would welcome more discussions with SRA on this area.

54. If a co-regulatory approach is adopted there should be:
- Clear governance in place of the areas covered by co-regulation and those which are out of scope.
 - A framework/mechanism for identifying if a firm's approach satisfies the regulatory requirements that include an assessment of the effectiveness of the firm's enforcement/assessment process.
55. Effective systems to monitor the performance of firms operating in this way, including the provision of management information that will allow the regulator to identify where self assessment is not effective.
56. Co-regulation will require an ongoing dialogue between the regulator and the profession, with a commitment on both sides to quality and the best interests of the client.

Q13. How far do you think we should provide assurance to consumers and others about the quality of legal services?

57. Providing assurance of quality is a key role for any regulator. Regulators must have in place mechanisms to assure the quality of the work and service. The points raised in relation to question 7 are also relevant here.
58. As a minimum the SRA should:
- Assess and monitor compliance with their standards.
 - Ensure preventative enforcement against individuals/entities found to be in breach of regulations is in place. This should impact on practice rights as well as accreditation status, and records should be maintained in order to have confidence that breaches are managed and do not re-occur.
59. Alongside this we would expect the framework to help people make better-informed choices about where to get help through the provision of information such as that suggested in paragraph 12.

The organisation or management of the environment in which legal services are provided

Q14. How far should responsibility for the quality of legal services rest with the entity as opposed to individual solicitors?

60. We welcome SRA's move to regulate firms as well as individuals. In practice, most purchasers of legal services view themselves as customers of an organisation, not an individual, and many regulatory responsibilities are appropriately placed at the organisational level. We believe that individual conduct and competence is a product of organisational culture and standards alongside an individual's behaviour and ability.
61. The introduction of a framework for all practitioners should encourage parity, allow benchmarking and most importantly ensure that the end user receives a good service regardless of the individual or organisation they use.

62. This approach is being used or proposed in other sectors. For example the Forensic Science Regulator has recently set out its plans for the regulation of forensic science with the framework covering the individual, the organisation and the methods used.
63. This also mirrors our approach in legal aid, where we contract with the firm rather than the individual. The majority of our contracts and quality management systems are applied across the whole legal aid work of an organisation. However we also specify standards for individuals, such as the competence requirements for legal aid category supervisors or individual accreditation for fee earners in certain categories of law.
64. Our experience from the introduction of the SQM and subsequent peer review results is that where things go wrong it is often because there are poor processes in place, typically linked to supervision and file review. We believe that the high pass rate in peer review is partly attributable to the beneficial impact of the SQM on legal aid providers' systems.

Q15. How far can supervision help ensure that work is done to the right standard?

65. It is the LSC's experience since the introduction of quality standards in the 1990s that effective supervision is a key component in assuring quality services for clients. Failures in supervision are almost always highlighted in the reports of firms with poor peer review results. As such it is appropriate that the SRA is looking into requirements relating to supervision and supervisory competence.
66. We do not agree that practitioners with over three years experience should be viewed as being able to practice without supervision (paragraph 44, first bullet point). Supervision is important for all staff regardless of their level or experience to ensure that a consistent quality service is provided to clients.
67. The LSC requires all publicly funded providers to undergo supervision, regardless of their level or experience. This includes requirements for sole practitioners to self supervise through regular file reviews. We would like to see supervision requirements in place for all practitioners. This need not be too onerous as the emphasis should be placed on tailoring supervision to the specific knowledge, skills and experience of the individual. For example a trainee solicitor will need a different level of supervision from a partner in a firm. Supervision can be an effective risk management tool that the firm can use to protect clients and themselves and it should be harnessed as such.

The competence of the individual undertaking the work

Q16. How can we best use the talents of solicitors and others within law firms to ensure that consumers and clients receive a good quality of service?

68. SRA should consider looking at ways to celebrate and promote the best practice already at work in the sector. It may also be beneficial for the SRA to actively encourage joint working either through mentoring schemes or inter firm peer review.

69. It may be beneficial to work with the profession to develop networks for information sharing on quality assurance. The SRA should also make use of the skills and experience of practitioners during the development of the framework.
70. However alongside utilising the talents of the profession, SRA should look to involve consumers and finding out what they believe are indicators of a quality service.

Q17. We have identified a series of roles to explore; have we captured the right roles and how far do you think these individuals could assist in assuring the quality of the delivery of legal services?

71. We believe that individuals at all stages of their career and in different positions within the system have an important role in assuring quality delivery of services as they will all have interaction with clients or participate in their cases. Whoever the client sees should be capable of either providing help directly or helping them to access someone that can. An important part of that is an individual's recognition of the limits of their competence.
72. We agree that the roles identified can assist in assuring the quality of the services provided. In particular we believe supervisors play a key role in ensuring quality. Our comments in response to question 15 support this.
73. The SRA should consider including Solicitor Advocates in the list. More solicitors are undertaking advocacy within the higher courts and the skills and behaviours required are often different from or more complex than those for general practitioners. At the stage advocacy is required in a case the implications for the client can be more serious; potentially in criminal cases their liberty may be at stake. As such these people play a key role in assuring the quality of service provided for the client. The inclusion of an advocacy role profile linked to standards for advocacy would increase transparency for clients and enable clear career paths for advocates. With new business structures on the horizon and the increase in the use of both employed barristers and solicitors undertaking advocacy, the role of an advocate should be clearly defined. We are aware that the SRA are already involved in work in this area with both the Higher Rights Accreditation and their involvement in the Quality Assurance for Advocates project.

Q18. How can Continuing Professional Development (CPD) be developed so that it supports a learning profession?

74. The use of CPD is widely recognised as beneficial to assuring quality services to consumers. It is used in many professions. CPD has a role to play in any future quality assurance framework. However for it to be reliable and truly support a learning profession, the CPD accreditation process needs to undergo a review.
75. Under current arrangements the standard of CPD courses is not consistent. There should be consistency between the work/learning required for each course. This requires a robust framework to be in place for accrediting courses/organisations/seminars and a system in place to monitor if standards are being upheld.

76. We strongly believe that to be most effective in supporting high quality standards, individuals should be required to obtain at least some proportion of their annual CPD in their area(s) of specialism.